

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CLERK'S MINUTES

BEFORE DISTRICT JUDGE JAMES O. BROWNING

CASE No.:	CV 13-1005 JB/SCY	DATE:	December 22, 2015
CASE CAPTION:	<i>Leon v. Fed Ex</i>		
CRD:	D. Wheeler	COURT REPORTER:	J. Bean
COURT IN SESSION:	9:02 am	COURT IN RECESS:	10:40 a.m.
	10:55 a.m.		12:47 a.m.
			TOTAL: 3 hrs. 30 min.

TYPE OF PROCEEDING: MOTION HEARING

COURT'S RULING/DISPOSITION:

1. Defendant's Motion in Limine to Exclude the 911 Call [62]
2. Defendant's Motion in Limine to Exclude Allegation of Additional Statutory Violations Not Disclosed by Plaintiff's Expert, Lew Grill [63]
3. Defendant's Omnibus Motion in Limine [64/66]
4. Defendant's Motion in Limine to Exclude Evidence of the Accident Register Report and Other Accidents [65]
5. Defendant's Motion in Limine to Exclude Brian McDonald's Testimony on Hedonic Damages [67]
6. Defendant's Motion for Partial Summary Judgment on Plaintiff's Claim for Aiding and Abetting [68]
7. Defendant's Motion to Bifurcate Proceedings as to Punitive Damages Claim [69]
8. Defendant's Motion for Partial Summary Judgment on Plaintiff's Claims for Punitive Damages [70]
9. Defendant's Motion in Limine to Exclude Graphic Photographs [71]
10. Defendant's Motion in Limine Regarding Evidentiary Issues Associated With Plaintiff's Punitive Damages Claims [72]
11. Defendant's Motion for Partial Summary Judgment on Plaintiff's Damage Claim for Pain and Suffering [73]
12. Defendant's Motion in Limine to Admit Evidence of the Settlement Between Plaintiff and Puckett Transportation, Inc. [74]
13. Defendant's Motion for Partial Summary Judgment That Puckett Transportation, Inc.'s Driver Larry Payne [75]
14. Plaintiff's Motion in Limine [76]

ORDER CONSISTENT WITH COURT'S RULING TO BE PREPARED BY: Court

ATTORNEYS PRESENT FOR PLAINTIFF(S):

Paul Barber/Nathan Anderson

ATTORNEYS PRESENT FOR DEFENDANT(S):

Brenda Saiz/Michael Kaemper, Abigail Yates

PROCEEDINGS

Court in session: 9:02 a.m.

COURT: Calls case. Counsel enter appearances.

1. Motion in Limine to Exclude the 911 Call

Ms. Yates: Argues in support of motion.

Mr. Barber: Argues in opposition.

Ms. Yates: Argues in further support.

Court: Inclined to deny motion.

2. Motion in Limine to Exclude Allegation of Additional Statutory Violations Not Disclosed by Plaintiff's Expert, Lew Grill

Court: Inclined to grant.

Ms. Yates: Argues in support of motion.

Mr. Barber: Argues in opposition.

Court: At present is limited to what is in report.

3. Omnibus Motion in Limine

Court: Golden Rule argument – inclined to grant – will apply to both counsel.

Ms. Saiz: Agrees with Golden Rule argument.

Mr. Barber: Disagrees.

Court: Do not preclude talking about justice in closings. Keep personal beliefs and opinions out of case.

Ms. Saiz: Agrees.

Mr. Barber: Disagrees.

Court: Referring to Plaintiff as a victim – should not be used during questioning; fair game at closing.

Court: Send jury message passion/prejudice – conscious of community.

Ms. Saiz: Addresses send a message statement.

Court: Counsel not to ask jury to decide case based on passion or prejudice, will be instructing otherwise – not inclined to handicap plaintiff, will not grant that portion of motion.

Court: Evidence not produced should not be introduced, goes to both sides.

Ms. Saiz: Addresses Court re evidence.

Mr. Barber: Addresses Court re evidence.

Court: Will grant – preclude introduction of evidence that has not been produced by both sides. Not going to restrict references to witnesses by either party – in closing. Same with settlement offers or lack thereof. Will exclude all requests for information or documents in the presence of the jury. Will preclude evidence of wealth unless punitive comes into case.

Court: Inclined to preclude each side from talking about size of law firms representing. Simply have introduction at beginning of case.

Court: Voir Dire – Pretrial Order will address.

Ms. Saiz: Argues in support of motion.

Mr. Barber: Addresses Court.

Court: Parties to work on PTO – inclined to grant.

Court: References to Log Book Violations and/or Improper Maintenance of Tractor.

Mr. Barber: Addresses court re danger zone.

Mr. Saiz: Addresses Court re danger zone and references to log book violations and maintenance.

Court: Exclude log book violations and/or improper maintenance from trial. As far as danger zone do not know if going to preclude Mr. Grill from using that phrase.

Ms. Saiz: Argues in support of amended motion – alleged citations in Mr. Grill’s expert report.

Mr. Barber: Argues in opposition.

Ms. Saiz: Further argues in support.

Court: Inclined to keep citations out.

Morga v. Fed Ex Case

Court: Punitive damages case – need more information.

Ms. Saiz: Argues in support of motion.

Mr. Barber: Addresses Court re similarities.

Court: Need to know more again Morga case; submit brief form or letter to educate Court on facts.

4. Motion in Limine to Exclude Evidence of the Accident Register Report and Other Accidents

Court: Inclined to grant in part and deny in part.

Ms. Saiz: Argues in support of motion.

Mr. Barber: Argues in opposition.

Ms. Saiz: Argues in further support.

Court: Inclined to stick with original ruling, came come in if link accidents.

Court adjourned: 10:40 a.m.

Court in session: 11:55 a.m.

5. Motion in Limine to Exclude Brian McDonald’s Testimony on Hedonic Damages

Court: Disclosed has used McDonald in past. McDonald can testify about what hedonic damages are. Does not need to and should not refer to NM law.

Ms. Saiz: Agrees with Court limitations.

Mr. Barber: Disagrees but understands.

Court: Will look at prior opinions.

6. Motion for Partial Summary Judgment on Plaintiff’s Claim for Aiding and Abetting

Court: Grant to the extent based on any facts at all.

Mr. Kaemper: Argues in support of motion.

Mr. Barber: Argues in opposition.

Mr. Kaemper: Argues in further support .

Court: Inclined to grant in part and deny in part as to training issue.

7. Motion to Bifurcate Proceedings as to Punitive Damages Claims

Mr. Kaemper: Argues in support of motion.

Mr. Barber: Argues in opposition.

Court: Inclined to deny.

8. Motion for Partial Summary Judgment on Plaintiff's Claims for Punitive Damages

Mr. Kaemper: Argues in support of motion.

Mr. Barber: Argues in opposition.

Mr. Kaemper: Argues in further support

Court: Inclined to deny motion and allow training issue for punitive damage claim.

9. Motion in Limine to Exclude Graphic Photos

Ms. Yates: Argues in support of motion; asks Court to review photographs.

Mr. Barber: Argues in opposition.

Ms. Yates: Argues in further support.

Court: Inclined to deny.

10. Motion in Limine Re Evidentiary Issues Associated With Plaintiff's Punitive Damages Claims

Ms. Saiz: Argues in support of motion.

Mr. Barber: Argues in opposition to motion.

Court: Do not think will handicap or limit plaintiff to the very last with it but want very light touch as far as request in opening.

11. Motion for Partial Summary Judgment on Plaintiff's Damage Claim for Pain and Suffering

Mr. Kaemper: Argues in support of motion.

Mr. Barber: Argues in opposition.

Mr. Kaemper: Argues in further support.

Court: Inclined to deny motion.

12. Motion in Limine to Admit Evidence of the Settlement Between Plaintiff and Puckett Transportation, Inc.

Ms. Yates: Argues in support of motion.

Mr. Barber: Argues in opposition.

Ms. Yates: Argues in further support.

Court: Inclined to deny.

13. Motion for Partial Summary Judgment that Puckett Transportation, Inc.'s Driver Larry Payne was Negligent Per Se

Mr. Kaemper: Argues in support of motion.

Mr. Barber: Argues in opposition.

Mr. Kaemper: Argues in further support.

Court: Inclined to deny.

14. Plaintiff's Motion in Limine

Seat Belt Usage – parties in agreement .

Court: Granted.

Out of Court Statements by Larry Payne

Mr. Barber: Argues in support of motion.

Ms. Saiz: Argues in opposition.

Mr. Barber: Argues in further support.

Ms. Saiz: Argues in further opposition.

Court: Inclined to grant.

Allegations Against Payne and Puckett

Mr. Barber: Argues in support of motion.

Ms. Saiz: Argues in opposition.

Mr. Barber: Argues in further support.

Court: Inclined to deny.

Court in Recess: 12:47 p.m.